

APPALACHIAN VOICES,
CENTER FOR BIOLOGICAL
DIVERSITY, and
SIERRA CLUB,

Plaintiffs,

v.

TENNESSEE VALLEY AUTHORITY,

Defendant.

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Case No. 3:23-cv-00604

JUDGE RICHARDSON
MAGISTRATE JUDGE HOLMES

Plaintiffs Appalachian Voices, the Center for Biological Diversity, and Sierra Club and Defendant Tennessee Valley Authority (“TVA”) respectfully submit this Joint Case Resolution Status Report. In the Scheduling Order, the Court directed the Parties to make at least one substantive attempt at resolution of this case and to file a joint status report confirming those efforts and stating the specific steps taken towards case resolution by March 29, 2024. ECF No. 23 § F. As required by the Order, Plaintiffs and TVA state as follows:

1

U.S.C. § 4321 *et seq.* TVA contends that the Final EIS complied with NEPA and that its decision to construct and operate the Cumberland Gas Plant should be upheld. ECF No. 17.

2. Because this is an action for judicial review on an administrative record (“AR”) under the Administrative Procedure Act, 5 U.S.C. § 706, the Court will resolve Plaintiffs’ claims on cross motions for summary judgment. On December 15, 2023, TVA lodged an index to the AR and delivered electronic copies of the documents identified in the index to Plaintiffs’ counsel and the Court. ECF No. 27.

3. On February 13, 2024, Plaintiffs filed a motion seeking to compel TVA to include additional records in the AR. ECF No. 28. In response, TVA stated that environmental reviews of certain solar projects had been inadvertently omitted from the AR and would now be included; however, TVA opposed Plaintiffs’ motion with respect to all other records Plaintiffs had requested. ECF No. 29. The parties have jointly requested oral argument to resolve the remaining issues concerning the content of the AR. ECF No. 32.

4. The Court’s Scheduling Order establishes deadlines for cross motions for summary judgment. ECF No. 23 § L. Plaintiffs initiate the cross-motion briefing by filing a motion for summary judgment and supporting memorandum no later than April 19, 2024. ECF No. 23 § L.

5. Because Plaintiffs’ Motion to Complete the Administrative Record remains pending, Plaintiffs filed an unopposed motion seeking to suspend the summary judgment briefing deadlines earlier today to allow the Court to resolve the AR issues. ECF No. 33.

6. On March 21, 2024, Plaintiffs sent TVA a confidential settlement offer letter proposing a settlement to be embodied in a joint consent decree made between the parties and approved by the Court. TVA responded by letter on March 27, 2024, rejecting Plaintiffs’ offer.

7. On March 28, 2024, counsel for Plaintiffs and counsel for TVA attended a video conference at which counsel discussed the parties' respective positions.

8. The parties have not agreed to a settlement of this case to date. However, the parties intend to continue evaluate the potential for settlement throughout the pendency of this case as circumstances evolve. Consistent with the Court's Order, the parties have made good faith substantive efforts to resolve this case and will continue to do so.

DATE: March 29, 2024

Respectfully submitted,

/s Gregory Buppert

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¹ As required by Local Rule 83.01(d)(3), Mr. Buppert is a member of the Tennessee bar and has provided his Tennessee Board of Professional Responsibility number.

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CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2024, I served a copy of the foregoing document on the following parties via the Court's electronic case filing system:

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